STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL D. MIER,

Plaintiff-Appellant,

v

CLARENCE W. ZIMMERMAN, PAULINE F. ZIMMERMAN, PEGGY J. MIER, JEFFREY F. ORR, and PAIGE P. MIER,

Defendants-Appellees.

UNPUBLISHED
March 13, 2008

No. 273312
Ogemaw Circuit Court
LC No. 05-655531-CH

Before: Saad, C.J., and Murphy and Donofrio, JJ.

PER CURIAM.

This action involves plaintiff's claim that he is entitled to possession of 187 acres of leased farm property and treble damages under MCL 600.2918 after being disseised of the property. The trial court entered a judgment, following a bench trial, finding that plaintiff had terminated the lease by abandoning the property in July 2004, although it still awarded him damages in the amount of $9,060 for farming losses incurred during the remainder of a one-year lease period, under a year-to-year tenancy, that ran through October 2004. Plaintiff appeals as of right, and we affirm.

This Court reviews a trial court's findings of fact in a bench trial, including the determination of damages, for clear error and its conclusions of law de novo. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003), citing MCR 2.613(C); *Marshall Lasser, PC v George*, 252 Mich App 104, 110; 651 NW2d 158 (2002); *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). Similarly, when reviewing a trial court's ruling on matters of equity, such as determining possessory interests, this Court reviews the trial court's conclusions de novo, but the trial court's underlying findings of fact are reviewed for clear error. *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998). In the application of the clearly erroneous standard, "regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Finally, statutory interpretation constitutes a legal question that we review de novo on appeal. *DLF Trucking, Inc v Bach*, 268 Mich App 306, 309; 707 NW2d 606 (2005).

On appeal, plaintiff argues that he was entitled to possession of the farmland and treble damages pursuant to MCL 600.2918 and that the trial court erred in finding to the contrary. He further argues that the trial court erred in determining that he had abandoned the lease.

MCL 600.2918 provides, in pertinent part, as follows:

> (1) Any person who is ejected or put out of any lands or tenements in a forcible and unlawful manner, or being out is afterwards held and kept out, by force, if he prevails, is entitled to recover 3 times the amount of his actual damages or $200.00, whichever is greater, in addition to recovering possession.
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> (2) Any tenant in possession of premises whose possessory interest has been unlawfully interfered with by the owner, lessor, licensor, or their agents shall be entitled to recover the amount of his actual damages or $200.00, whichever is greater, for each occurrence and, where possession has been lost, to recover possession. . . .
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> (3) The provisions of subsection (2) shall not apply where the owner, lessor, licensor, or their agents can establish that he:
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> * * *
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> (c) Believed in good faith the tenant had abandoned the premises, and after diligent inquiry had reason to believe the tenant does not intend to return, and current rent is not paid.

Plaintiff couches his argument regarding possession solely under subsection (1) of § 2918, and the claim for treble damages also falls under subsection (1).[1] We point out that the abandonment provision found in subsection (3)(c) of § 2918 applies only to an action brought pursuant to "[t]he provisions of subsection (2)." We further note that, in the context of the abandonment provision in subsection (3)(c), there must not only be a good faith belief that a tenant has abandoned the premises, the owner also has to establish that he or she had grounds to believe that the tenant did not intend to return to the premises after first making a diligent inquiry, and, furthermore, current rent had to be outstanding.[2] While there may have been a good faith belief on the part of defendants that plaintiff had abandoned the farm property when he was absent from the farm for three weeks and removed 64 head of cattle, gates, feeders,

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[1] In his closing argument to the trial court and in his trial brief, plaintiff relied on subsection (1) of § 2918 in support of his claim for relief.

[2] The abandonment provision does not require actual abandonment, and it clearly addresses situations in which there was no abandonment, but the landlord held a good faith belief that the premises had indeed been abandoned. Here, the court found that the lease was terminated on the basis of actual abandonment.

lumber, and equipment for lumbering, there was a lack of evidence showing that a diligent inquiry was made by defendants into whether plaintiff intended to return to the farm property,[3] and there were no outstanding rental payments due. However, the trial court, in ruling from the bench, spoke of termination and abandonment of the lease in general terms without any reference or confining the context to subsection (3)(c).[4] On the basis of plaintiff's particular arguments, the question is ultimately whether the trial court erred in not awarding him possession and treble damages under subsection (1) of § 2918.

MCL 600.2918(1) requires ejectment from the property in a "forcible and unlawful manner" or the use of "force" in keeping the tenant from entering the property. Plaintiff relies on the evidence that defendants summoned the police when plaintiff indicated that he was going to clean a barn and evidence that the responding officer told plaintiff that he would be subject to arrest for trespassing if he entered the property.

Interpreting a predecessor statute, 1857 CL 4717, that is nearly identical to MCL 600.2918(1) and which contained the same words at issue here, i.e., "forcible and unlawful manner" and "force," our Supreme Court in *Shaw v Hoffman*, 25 Mich 162, 169 (1872), stated:

> [T]he entry or the detainer must be riotous, or personal violence must be used or in some way threatened, or the conduct of the parties guilty of the entry or detainer must be such as in some way to inspire terror or alarm in the persons evicted or kept out; in other words, the force contemplated by the statute is not merely the force used against, or upon the property, but force used or threatened against persons as a means, or for the purpose of expelling or keeping out the prior possessor.

MCL 600.2918 "has been construed rather strictly in favor of the landlord." 2 Cameron, *Michigan Real Property Law* (3d ed), Landlord and Tenant, § 20.65, p 1158, citing *Shaw*, *supra.* The actions taken by defendants here do not satisfy the *Shaw* standard.[5] There was no evidence of riotous behavior, personal violence, or efforts to inspire terror or alarm on the part of defendants. With respect to the officer, he indicated that he was simply trying to keep the peace and that it was only a possibility that he would arrest plaintiff should he enter the property.

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[3] The farm property wraps around plaintiff's home, and he had returned to his home after being gone for only three days in July 2004. Plaintiff's house is located on his own property.

[4] In defendants' closing argument, abandonment and termination of the lease was argued, but there was no reference to MCL 600.2918(3)(c). In defendants' trial brief, they merely claimed abandonment and termination pursuant to *Malone v Newhouse*, 248 Mich 516; 227 NW 750 (1929), which case they also cited to the court during closing arguments.

[5] It must be remembered that it is the actions of defendants that is subject to scrutiny here, not the police officer's actions. Contrary to plaintiff's contention, there is no evidence that the officer was acting as defendants' "agent," although the officer did know the family. Defendants merely called the police, and the officer could just as easily have directed defendants to let plaintiff occupy the farm and to pursue an eviction action through the courts if they wanted him off the property.

Despite the age of the *Shaw* opinion, it remains binding precedent. Moreover, MCL 600.2918(1) is designed to "prohibit forceful *self-help,*" and is "intended to prevent parties from *taking the law into their own hands* in circumstances which are likely to result in a breach of peace." *Deroshia v Union Terminal Piers*, 151 Mich App 715, 718-719; 391 NW2d 458 (1986)(emphasis added). Although defendants did not resort to an eviction action under the summary proceedings act, MCL 600.5701 *et seq*., summoning a police officer is not akin to using forceful self-help, nor can it be said that defendants took the law into their own hands. Clearly, the Legislature's allowance for treble damages was meant to apply in egregious circumstances, and they simply did not exist here.

We also rule that plaintiff is not entitled to possession or treble damages because we find no clear error with the court's determination that plaintiff terminated the lease by abandonment outside the context of MCL 600.2918(3)(c). In *Day v Lacchia*, 175 Mich App 363, 375-376; 437 NW2d 400 (1989), this Court, addressing an argument by the plaintiffs that the trial court erred in not awarding damages under subsection (1) of § 2918, held that the plaintiffs were not entitled to recovery because they had no right of possession, given that the property had been abandoned. In *Sparling Plastic Industries, Inc v Sparling*, 229 Mich App 704, 717-718; 583 NW2d 232 (1998), this Court stated that in order to establish abandonment, a party must meet two requirements: "First, it must be shown that there is an intent to relinquish the property and, second, there must be external acts that put that intention into effect. . . . Nonuse alone is insufficient to prove abandonment." In the case at bar, there was evidence, as indicated above, that plaintiff was absent from the farm for three weeks and had removed 64 head of cattle, gates, feeders, lumber, equipment for lumbering, and other materials. Furthermore, there was evidence that plaintiff verbally expressed that he was done with farming. While plaintiff contended that he did not farm the property for the three-week period because he was cutting and baling hay on other farms, there was testimony that he had not yet cut and baled the hay on the farm property at issue, which was inconsistent with plaintiff's actions in past years during which he always first took care of his own hay. Plaintiff testified that he had no intent to abandon the leasehold, but it was for the trial court to judge credibility, MCR 2.613(C), and the court specifically indicated that plaintiff's testimony often lacked credibility. There was evidence of an intent to relinquish the property along with external acts reflecting that intent, and we find no clear error with respect to the court's conclusion that plaintiff terminated the lease by way of abandonment.

Affirmed.

/s/ Henry William Saad
/s/ William B. Murphy
/s/ Pat M. Donofrio